

SUBMISSION TO THE

2011 COMMISSION ON JUDICIAL COMPENSATION



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CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK

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EXECUTIVE SUMMARY

ON BEHALF OF THE NEW YORK STATE JUDICIARY, Chief Administrative Judge Ann Pfau makes this Submission to the 2011 Commission on Judicial Compensation to assist it in fulfilling its mandate, pursuant to chapter 567 of the Laws of 2010, to establish appropriate levels of compensation for New York State judges and justices for the four-year period commencing April 1, 2012.

The Commission represents the first opportunity in State history to adjust judicial salaries in a transparent, nonpolitical manner on the basis of rational, objective and predictable criteria. The Judiciary strongly recommends that four widely accepted fundamental principles inform this Commission's historic work:

Fairness	Judges, like all public officers, should receive fair compensation, determined in an equitable manner, that maintains its economic value over time.
Objectivity	Compensation of judges should be based on criteria that are objective and easily evaluated by the public.
Regularity	A regular and predictable process must ensure that salaries, once adjusted, remain adequate and do not lose ground to inflation.
Institutional Integrity	The structure of judicial compensation should promote public confidence in the independence, neutrality, excellence and diversity of the Judiciary, and promote the effective management of courtrooms and staff.

The Judiciary presents the following facts for the Commission's consideration in applying these four core principles:

- A strong Judiciary is vital to every aspect of a civil society, assuring protection of civic freedoms, swift resolution of commercial and other civil disputes, and fair redress of criminal complaints. The Judiciary has long played a central role in maintaining New York's national and international prominence in law and commerce.
- New York's judges have gone without a cost-of-living adjustment or a salary increase since January 1999 — a pay freeze unprecedented in the modern history of any court system in the nation. By April 1, 2012 — the earliest date that this Commission's work can take effect — judicial salaries in this State will have been frozen for more than 13 years.
- Since the last judicial pay adjustment, inflation has eroded the value of judicial salaries by 41%. To date, an average judge serving throughout this period has lost more than \$330,000 relative to the cost of living.

- Since the last judicial pay adjustment, when the Legislature set New York Supreme Court¹ salaries at \$136,700 — then at par with U.S. District Court salaries — federal judicial salaries have increased by 27.3%. To date, New York judges serving throughout this period have earned approximately \$292,000 less than their federal colleagues.
- Since 2008, New York ranks 50th — dead last — in real purchasing power of judicial salaries among the states. New York judges effectively earn less than half of what their counterparts in Tennessee and Delaware earn, and barely half of what their judicial colleagues earn in Illinois and Virginia. Never in New York’s modern history have judges been paid so little relative to living costs or the real salaries of other judges nationwide.
- Since the last judicial pay adjustment, New York caseloads have grown by 20% while the number of judgeships has grown by only 2.6%. As a result, New York judges are working harder than ever, while earning far less in real terms.
- Since the last judicial pay adjustment, collective bargaining agreements have caused the pay of a typical non-judicial employee in the Unified Court System to rise by more than 40%, consistent with salary adjustments for Executive branch personnel. For the first time in State history, many non-judicial employees now earn more than the judges they serve.
- Since 1999, salaries of both public- and private-sector attorneys comprising the pool of eligible, experienced and qualified candidates for judicial office in New York have risen steadily and markedly.
- Salary stagnation, salary compression and salary inversion have threatened to hamper the State’s ability to retain and recruit judges, diminish public confidence in the quality of the Judiciary, and impact adversely the Judiciary’s institutional well-being and governance.

The Judiciary submits that, upon consideration of these core principles and undisputed facts, the Commission should direct an appropriately substantial increase in judicial compensation to take effect in its entirety on April 1, 2012, together with cost-of-living adjustments in the years that follow. This Submission does not recommend a specific compensation amount: instead, it presents the factors that we believe the Commission should consider in exercising its independent judgment and discretion. An adjustment consistent with the rationale set forth below would end the unfairness and damage caused by a 13-year judicial salary freeze, establish pay levels consistent with the valuable and complex work performed by judges, restore an appropriate relationship between judicial and staff salaries in the courts, and prevent the recurrence of this serious problem. Such an adjustment represents a balanced approach, correcting the most entrenched and universally recognized problems affecting the Judiciary, while remaining sensitive to the constraints of the State’s current fiscal circumstances.

¹ The Supreme Court is the trial court of general statewide civil and criminal jurisdiction in New York State. *See N.Y. Const., art. VI, § 7(a); Siegel, New York Practice (4th ed.), §12.* For this reason, the salary of a Justice of the Supreme Court will be used as the benchmark for State judicial salaries and statistical salary comparisons throughout this Report.

These factors lead to the following range of values as appropriate salary levels for the benchmark position of Justice of the Supreme Court:

- **INFLATION:** An adjustment designed to restore the purchasing power of judicial pay to its 1999 level consistent with the rate of inflation would result in a Supreme Court Justice salary of \$195,754 in April 2012.
- **STATE RANK:** An adjustment designed to lift New York from 50th to 25th in rank among the States on a cost-adjusted basis would result in a salary of \$220,836 in April 2012. A more modest adjustment — from 50th to 40th national rank — would bring that salary to \$194,068.
- **NON-JUDICIAL STAFF COMPENSATION:** An adjustment designed to reestablish the 1999 salary ratio between senior law clerks and the justices they serve would result in a salary of \$192,218 in April 2012.
- **FEDERAL JUDICIAL SALARIES, ADJUSTED FOR INFLATION:** An adjustment designed to calibrate New York salaries to those of federal judges, with an adjustment for inflation since January 2006, would result in a Supreme Court salary of \$193,813.

In urging an immediate adjustment in compensation, the Judiciary is keenly aware of the State's fiscal situation. We recognize that this is a period of shared sacrifice, of belt-tightening, of doing more with less. Over the last year, the court system has slashed expenditures, cut numerous programs, and substantially reduced its workforce in response to State budget constraints. Notwithstanding these fiscal exigencies, judges deserve compensation no less commensurate with the importance of their offices than do the thousands of other public officials, in the Executive and the Judiciary and elsewhere, who consistently received pay increases during the last 12½ years. Any of these adjustments would increase the State budget by less than 76 one-thousandths of one percent annually. The establishment of appropriate judicial compensation is not now, and never has been, a question of the State's ability to pay.

In sum, this Submission's pay recommendations are prudent and responsible. They are rooted as well in a fundamental premise: after such a lengthy pay freeze, the cost of the reform of past practices must not prevent this Commission from fulfilling its urgent mandate to provide appropriate compensation to New York's judges — a mandate critical to preserving the institutional strength of our State government's Third Branch.

I. THE MANDATE OF THE COMMISSION ON JUDICIAL COMPENSATION

ON DECEMBER 10, 2010, the Governor signed into law chapter 567 of the Laws of 2010 (Supp. 2-3),² providing for the creation of a Commission on Judicial Compensation. Composed of seven members — three appointed by the Governor, two by the Chief Judge, and one each by the Temporary President of the Senate and the Speaker of the Assembly — the Commission has been charged with the task of examining the adequacy of the salaries and benefits received by State-paid judges and justices of the Unified Court System, and determining adjustments to those salaries. The statute sets forth this mandate as follows:

- (i) examine the prevailing adequacy of pay levels and non-salary benefits received by the judges and justices of the state-paid courts of the unified court system and housing judges of the civil court of the city of New York and determine whether any of such pay levels warrant adjustment; and
- (ii) determine whether, for any of the four years commencing on the first of April of such years, following the year in which the [C]ommission is established, the annual salaries for the judges and justices of the state-paid courts of the unified court system and housing judges of the civil court of the city of New York warrant adjustment.³

The statute further provides that, in discharging these duties, the Commission shall take into account:

all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by judges, executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation and non-salary benefits.⁴

The statute requires the Commission to present its report within 150 days of April 1 in the year in which it is established — for the present Commission, on or before August 29, 2011 — at which time the Commission is deemed dissolved. The proposals of the Commission to adjust judicial compensation will have the force of law, and will supersede inconsistent provisions of Judiciary Law Article 7-A, unless modified or abrogated by law prior to April 1 of the year as to which such proposal applies.

² Numbers in parentheses preceded by "Supp." refer to pages in the Supplemental Appendix to this Submission.

³ L. 2010, c. 567, § 1(a).

⁴ *Id.*

II. GUIDING PRINCIPLES

THE JUDICIARY IS A KEYSTONE OF SOCIETY. Since the founding of our Republic, it has been universally understood that there can be neither liberty, justice, nor public security without an independent, objective and vital judicial branch.⁵ New Yorkers turn to their courts by the millions each year to secure fundamental freedoms, enforce rights and obligations, resolve commercial and other civil disputes, protect the vulnerable and fairly adjudicate alleged crimes. New York’s civil and criminal justice systems, led by its Judiciary, are a fundament of the State’s national and international pre-eminence in law, business, and civic life.⁶

Consistent with the Judiciary’s importance as a separate, non-partisan, and apolitical branch of government, commentators have long recognized the core principles of fairness, objectivity, regularity, and preservation of institutional integrity as fundamental to the determination of appropriate compensation for judges.⁷ We believe that these principles should inform the Commission’s work, and will briefly address each in turn.

A. FAIRNESS

In the general course of human nature, *a power over a man’s subsistence amounts to a power over his will*. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter. *** It will be readily understood that the fluctuations in the value of money and in the state of society rendered a fixed rate of [judicial] compensation in the Constitution inadmissible. * * * It was therefore necessary to leave it to the discretion of the [L]egislature to vary its provisions in conformity to the variations in circumstances, yet under such restrictions as to put it out of the power of that body to change the condition of the individual for the worse.⁸

Careers in public service demand sacrifice, and those who join the bench must be ready to forego the more lucrative compensation available in the private sector. Nonetheless, judicial salaries should be broadly comparable to the remuneration received by attorneys

⁵ See e.g. Alexander Hamilton, “Federalist 78,” in *The Federalist Papers*, ed. Jacob E. Cooke (Middletown: Wesleyan University Press, 1961), pp. 528-29; ed; Cardozo, B., “The Nature of the Judicial Process” (1921), at 90.

⁶ A detailed description of the courts that comprise the Unified Court System is included in the Supplemental Appendix (Supp. 9-10).

⁷ See, e.g., National Center for State Courts, *Judicial Compensation in New York* (2007) (hereinafter “NCSC Report”), at 5-6.

⁸ Hamilton, “Federalist 79,” *The Federalist Papers*, pp. 531-32 (emphasis in original).

taking similar career paths and by other public servants having comparable responsibility, training and experience.⁹

The principle of fairness in judicial compensation is rooted in three separate ideas. First and foremost, it derives from the notion that an independent and dedicated judiciary requires protection of the value of its compensation against significant erosion relative to living costs. This primary principle of tripartite government, as articulated by our Framers in Federalist 79, seeks to maintain the equity in judicial salaries over time, so that judges “may then be sure of the ground upon which [they] stand[], and can never be deterred from [their] duty by the apprehension of being placed in a less eligible situation.”¹⁰ Second, this equity principle speaks to the public interest: appropriate compensation is crucial to attract and retain well-qualified attorneys for judicial service, insulate judges against involvement in politics, avoid compromise of ethical duties, eschew personal wealth as a qualification for judicial office, and assure an independent and excellent Judiciary. Third, the separation of powers implies that the Judiciary not be targeted for disparately negative treatment vis-à-vis other public officials,” so as to give the impression — real or perceived — that judges individually are subject to penalty or that the Judiciary as an institution is devalued.

As public servants, judges cannot expect to grow wealthy in State service. But fundamental equity requires that judicial salaries broadly maintain their value over time and not be allowed to consistently shrink as the price exacted of judges for apolitical public service. Likewise, fairness directs that judges not be singled out for special burdens, or compelled to make sacrifices in a manner or duration not asked of other public professionals. Any other result would not only be unfair to judges and the institutional Judiciary but, more importantly, to the public that they serve, and to the cause of an excellent justice system playing its appropriate constitutional role.

B. OBJECTIVITY

Judicial compensation should be set and revised by reference to an agreed-upon set of objective criteria that can be easily evaluated by the public. The process also should be transparent to the public.¹²

The factors that the Legislature directed the Commission to consider (e.g. rates of inflation, judicial salaries in other states and the federal government) set a path toward objectivity long absent in setting judicial compensation. Objectivity serves several purposes: it helps achieve a wise and consistent result; it demystifies the salary-setting process and avoids the appearance of arbitrariness or irrationality; and it allows the considered factors to be candidly assessed and debated. Honoring this objectivity in these ways will promote public confidence in the rationale of the Commission’s recommendation and the ultimate result.

⁹ NCSC Report, at 5.

¹⁰ Federalist 79.

¹¹ See generally, *U.S. v. Hatter*, 532 U.S. 557 (2001).

¹² NCSC Report, at 5.

Such objectivity also is required by our Constitution to serve the public's right to a "well-qualified, functioning Judiciary."¹³ As the Court of Appeals recently held, "whether the Judiciary is entitled to a compensation increase must be based upon an objective assessment of the Judiciary's needs if it is to retain its functional and structural independence."¹⁴ In this task, the setting of judicial compensation must proceed in "good faith" to avoid rendering the Judiciary "unduly dependent" in either reality or public perception.¹⁵ Objectivity as to both the process and the criteria the Commission employs in its review will best serve these important constitutional and policy objectives.

C. REGULARITY

The real value of judicial compensation should be maintained through adjustments that respond to inflation so that the salary a judge accepts upon joining the bench is not eroded to the detriment of his or her family. Equity is rarely possible in the absence of regular reviews that respond to cost-of-living increases.¹⁶

As a corollary to fairness in fixing judicial salaries, there must be a predictable mechanism to ensure that salaries, once adjusted, do not lose ground to inflationary erosion. This Commission's existence and the quadrennial process its authorizing statute requires serve this need for regularity, but only in part. Regularity also requires that the Commission provide for prospective and automatic adjustments gauged to economic forces that otherwise could erode judicial pay and render compensation unpredictable for judges and their families in the future.

D. INSTITUTIONAL INTEGRITY

The proper adjustment of salaries has implications far beyond fairness to individual judges. In any large public institution such as the Judiciary, successful long-term governance requires rational salary distinctions commensurate with the relative authority and responsibility of office-holders. Salary systems must calibrate appropriately between judicial and staff salaries, and between non-judicial staff commensurate with their seniority, experience, authority, and responsibility. This is particularly important in the court system, where the primary purpose of the institution is the exercise of constitutionally-derived powers exclusively held by judicial officers. For similar reasons, salaries must bear a rational relationship to compensation of others in the public and private sector, in New York and elsewhere, who perform similar legal roles. Lastly, salaries have obvious implications for judicial retention and recruitment: as the Court of Appeals recognized, the

¹³ *Maron, et al. v. Silver, et al., Larabee, et al. v. Governor of the State of N.Y., Chief Judge of the State of N.Y., et al. v. Governor of the State of N.Y., et al.*, 14 N.Y.3d 230, 257, 260 (2009) (hereinafter "*Chief Judge*"), citing *O'Donoghue v. U.S.*, 289 U.S. 516, 533 (1933).

¹⁴ *Id.*, at 259.

¹⁵ *Id.*, citing *People ex rel. Burby v. Howland*, 155 N.Y. 270, 282 (1898).

¹⁶ *Id.*

adequacy of salaries has an important impact on the diversity and quality of judges — the openness of the judicial career path to qualified New Yorkers of all socioeconomic and experiential backgrounds, and with it public confidence that the Judiciary will continue to reflect the full breadth of the State.¹⁷

When these institutional standards are ignored — for example, when staff subordinates routinely earn more than the officers whom they serve — the capacity of the Judiciary to preserve its authority, sustain its morale and perform its functions diminishes, perhaps irretrievably. Redressing this threat, and preventing its recurrence, is a separate and vitally important goal that must inform this Commission’s recommendations.

¹⁷ *Chief Judge*, 14 N.Y.3d at 263 (absent salaries sufficient to attract well-qualified individuals to judicial service, “only those with means will be financially able to assume a judicial post, negatively impacting the diversity of the Judiciary and discriminating against those who are well qualified and interested in serving, but nonetheless unable to aspire to a career in the Judiciary because of financial hardship that results from stagnant compensation over the years”).

III. RECENT JUDICIAL SALARY STAGNATION IN NEW YORK— ANALYSIS AND CONSEQUENCES

IN NEW YORK STATE OVER THE PAST 12½ YEARS, these fundamental judicial compensation principles of fairness, objectivity, regularity, and institutional integrity have been repeatedly ignored. The last salary adjustment for New York’s State-paid judges and justices was effective January 1, 1999.¹⁸ Since then, New York judges have received neither cost-of-living adjustment nor pay increase,¹⁹ despite steady inflation that has seriously eroded the real value of their compensation. No other state in the nation has subjected its judges to such a lengthy period of stagnant compensation. All state and federal judges in the country have received one or more pay increases since 1999, with an average increase of over 3.2% per year. As a result, New York judges’ salaries — which once ranked first in the nation — have fallen far behind those of their colleagues in other states, and currently rank last in the nation when adjusted for living costs.²⁰ During this same period, judges have been asked to work harder than ever before: case filings in New York courts have increased 20%, while the number of judgeships has increased by only 2.6% (Supp. 67-70).

New York State judges now earn considerably less than other professionals with comparable education and experience, in both the public and the private sector. The list of public employees earning substantially more than judges is lengthy and growing, and includes District Attorneys in New York City, deans of New York’s public law schools, professors in the State and City University systems, public school administrators, and many others. Many non-judicial employees in New York’s judicial branch (including the law clerks that serve State judges), having received the same pay increases as employees of the Executive branch over the past 12 years, now earn more than the judges who supervise them. New York judicial salaries also lag well behind those who lead many not-for-profit organizations or teach in public law schools. Unsurprisingly, the magnitude of the disparity between judges and attorneys in law firms is even more striking.²¹

Given these trends and the importance of an independent and fairly compensated judiciary, support for judicial pay reform has been virtually unanimous. Voices statewide from across

¹⁸ L. 1998, c. 630, § 16.

¹⁹ Commencing in State Fiscal Year 2008-2009, State judges have been eligible to receive disbursements or reimbursements from the Judicial Supplemental Support Fund for qualifying expenditures made in connection with their official duties, including bar association dues, educational fees, reference materials, and other related expenses.

²⁰ See § III(B), *infra*.

²¹ At major New York law firms, first-year associates — new law school graduates, many of whom have not yet passed the bar — now earn a \$160,000 base salary, more than any New York State judge, including the Chief Judge. Even at smaller firms in New York State, compensation far outstrips judicial salaries. A statewide study released in 2004 by the New York State Bar Association found that the annual compensation of partners at firms with 10 or more lawyers averaged \$293,567, more than twice the pay of a Supreme Court Justice.

government,²² the bar,²³ the business community²⁴ and government reform groups²⁵— as well as many editorial boards across the State²⁶ — have advocated for an increase in judicial compensation for nearly a decade: a compilation of their statements is included in the Supplemental Appendix (Supp. 121 *et seq.*). Prior governors proposed judicial pay adjustments along the broad lines proposed in this Submission,²⁷ and both Houses of the Legislature separately passed adjustments along those lines.²⁸ Various lawsuits also addressed this subject.²⁹ Common throughout has been a frank recognition of the need both to raise judicial salaries to an appropriate level and to establish a fair process for future salary adjustment.

In sum, measured by any factor relevant to the economic calculus of compensation — the consumer price index; judicial salaries in other jurisdictions; compensation of non-judicial employees; or federal judicial salaries (adjusted for inflation) — the consequences of the failure to raise New York’s judicial salaries have been broadly recognized and profound. We now address those factors in greater detail.

²² See, e.g., American Judges Association, Statement in Support (June 27, 2007); Conference of Chief Justices, Resolution (Jan. 30, 2008); District Attorneys Association of the State of New York, Letter of Support (Supp. 189-196).

²³ See, e.g., New York State Bar Association, Letter of Support (March 19, 2008); Asian American Bar Association, “Judges Have Waited Long Enough” *N.Y. Law Journal* (Mar. 21, 2008); Association of the Bar of the City of New York, Letter of Support (Mar. 27, 2008), Kamins, “Increased Pay for Judges,” *N.Y. Times*, Mar. 18, 2007; Conference of Columbian Lawyer Associations, resolution (May 2, 2005); New York State Bar Association, Letter to Governor (Mar. 29, 2008), Resolution (May 5, 2005); New York State Law School Deans, Letter to Governor and Legislative Leaders (Jun. 14, 2007); New York State Trial Lawyers Association, “An Open Letter to the Judiciary of the State of New York,” *New York Law Journal* (Apr. 25, 2007) (Supp. 189-190; 208-221).

²⁴ See, e.g., General Counsels of Major Corporations, Letter in Support (May 31, 2007); Partnership for New York City, Statement in Support (Dec. 1, 2006) (Supp. 205-207; 229-230).

²⁵ See, e.g., Brennan Center for Justice at NYU School of Law, Letter of Support (Oct. 5, 2006); Citizens Union of the City of New York, Letter of Support (Apr. 24, 2007); The Committee for Modern Courts, Letter of Support (Dec. 24, 2007); League of Women Voters of New York State, Letter of Support (Apr. 23, 2007) (Supp. 224-228).

²⁶ See e.g. *Albany Times Union*, “Injustice to Judges” (Feb. 7, 2008), “A Judge’s Pay” (Jan. 9, 2008), “Paying Judges,” (Dec. 9, 2007), “Unjust Salaries” (Apr. 11, 2007), “An Overdue Raise” (Jun. 1, 2005); “A Judge’s Pay” (Feb. 10, 2005); *Batavia Daily News*, “Judges Worthy of Hire” (May 5, 2007); *Buffalo News*, “Stopping the Pay Raises” (May 2, 2007); *Elmira Star-Gazette*, “New York Judges Deserve a Bigger Paycheck” (Dec. 13, 2007); *The Journal News*, “Compensating for Mistakes” (Jan. 26, 2008); “The Cost of Justice” (Jun. 3, 2005); *N.Y. Daily News*, “An Injustice to Judges” (Mar. 31, 2008); “Contempt of Courts” (Dec. 3, 2007); “Give the Judges a Raise” (Apr. 14, 2007); “Justice for Judges” (Jun. 6, 2005); *N.Y. Law Journal*, “Bar Should Mobilize for Judicial Salary Hikes” (Apr. 11, 2007); *N.Y. Times*, “Fair Pay for Judges” (Dec. 18, 2007); “Stop Stalling on Judicial Raises” (Dec. 11, 2007); *Newsday*, “State’s Judges Need Fair Shake” (Dec. 7, 2007), “Find a Way to Up Judges’ Pay” (Apr. 4, 2007), “State Judges Deserve Raise” (Mar. 26, 2005); *Poughkeepsie Journal*, “State Judges Merit an Increase in Pay” (Dec. 8, 2007), “Support Judicial Pay Raise in New York” (May 19, 2007); *Rochester Democrat & Chronicle*, “Bumbling and Fumbling” (May 3, 2007), “Judicial Pay Equity” (Apr. 13, 2007), “Judicial Sacrifice” (May 1, 2005); *Staten Island Advance*, “An Overdue Raise” (Dec. 5, 2007), “Boost Judges’ Pay” (Apr. 19, 2007); *Syracuse Post Standard*, “Judges’ Pay” (Feb. 18, 2007); *Troy Record*, “Get Behind Plan for Judges’ Raise” (May 2, 2007), “State Judges Long Overdue for Raises” (Apr. 16, 2007); *Utica Observer Dispatch*, “Overhaul Pay System for State Judges” (Dec. 16, 2007); *Watertown Daily Times*, “Judicial Pay” (Dec. 9, 2007), “Judicial Pay” (Apr. 11, 2007), “Judicial Salaries” (Oct. 25, 2005) (Supp. 132-185).

²⁷ See Governor’s Program Bill #18-2007 (Spitzer); Governor’s Program Bill #68-2005 (Pataki).

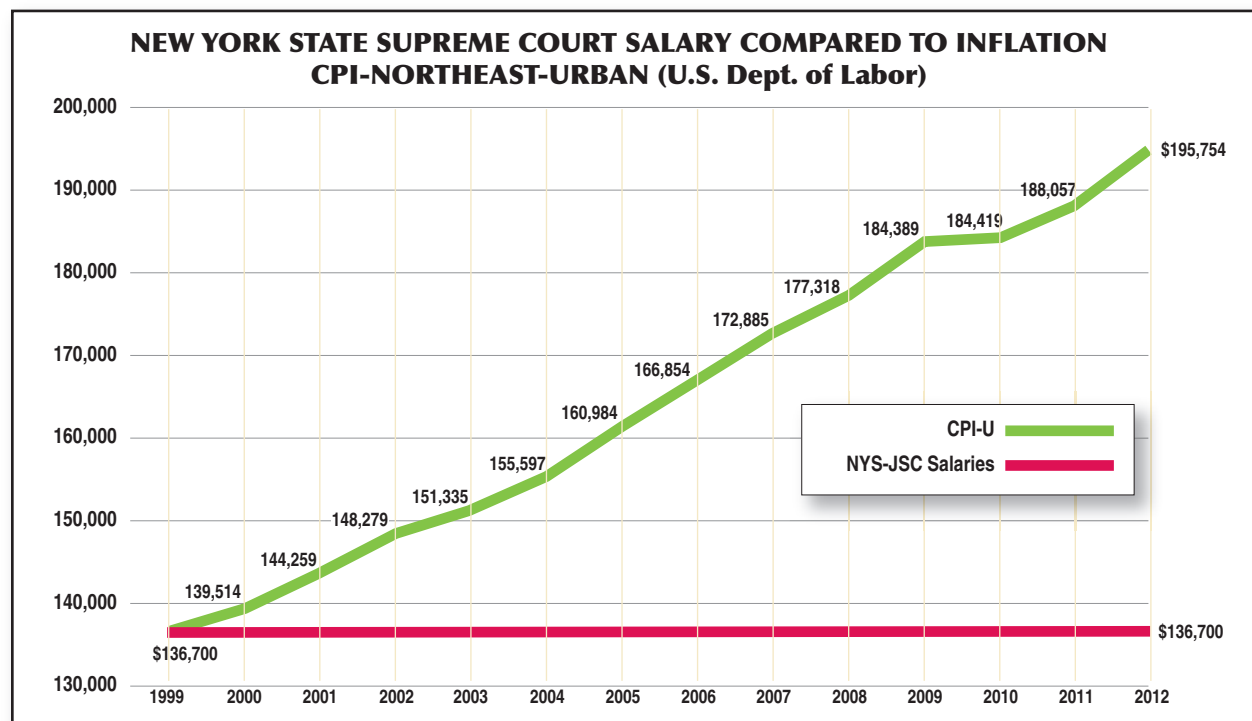
²⁸ See Senate Bills 5313 and 6550 (2007); Assembly Bill 4306-B (2007).

²⁹ See, e.g., *Chief Judge*, 14 N.Y.3d 230 (2009).

A. INFLATIONARY EROSION OF JUDICIAL COMPENSATION

To calculate the impact of inflation upon judicial salaries, this Submission employs the Consumer Price Index — Northeast Urban Region (“CPI-U”), constructed monthly by the U.S. Department of Labor, Bureau of Labor Statistics, which provides an official statistical measure of average price change in a fixed market basket of goods and services for the Northeastern states. This standard index’s weighting of core living expenses — such as food, housing, health care and transportation — is widely recognized as an accurate sample-based price measure against which to calibrate salaries and benefits for most Americans, including professionals and managers most comparable to judges and attorneys eligible for judicial service.³⁰

Since January 1, 1999, the CPI-U has risen 41%, with typical annual increases of between one and four percent. The following chart displays the impact of those increases upon the salaries of Justices of the New York Supreme Court:



In sum, the effect of inflation — or as the Framers described it, “fluctuations in the value of money”³¹ — on the annual compensation of New York’s Judiciary have been devastating. The cumulative effect of inflation is even more substantial. Based on the CPI-U, each Supreme Court Justice

³⁰ See U.S. Department of Labor, Bureau of Labor Statistics, “Consumer Price Index, Northeast,” available at www.bls.gov/ro1/914.htm (accessed June 30, 2011).

³¹ Federalist 79.

serving with a fixed salary during this full 12½ year period lost \$332,583 in purchasing power — or nearly 2.5 full years of current salary since 1999.³²

B. COMPENSATION OF JUDGES IN OTHER STATES

New York’s Judiciary has long been, and today continues to be, preeminent among the nation’s court systems. Historically, the salaries paid to New York’s judges reflected this status.³³ But in light of pay stagnation over the last 12½ years — the longest salary freeze of any judiciary in modern history — today they comprise the lowest judicial compensation in the nation.

Without taking regional living costs into account, judicial salaries in New York rank 20th among states nationally — far behind such lower-cost and lower-population states as Delaware, Nevada, Tennessee and Washington. Due to the protracted pay freeze, New York judges today earn the same nominal salaries as judges in Arkansas and Louisiana, where living costs and dockets are markedly lower. Compared to high-population states to which New York typically compares for policy purposes, New York’s judicial pay is strikingly low: trial judges in Illinois earn \$178,835 and in California earn \$178,789, or 31% more than their New York counterparts; in New Jersey and Pennsylvania, trial judges earn \$165,000 and \$164,602, respectively, or 21% more than their New York colleagues just across the state line.³⁴

But nominal judicial pay is not a metric of equity: in light of New York’s considerably higher living costs, the true extent of underpayment caused by the judicial pay freeze is far greater than these nominal rankings indicate.

One well-recognized measure of regional differences in living costs is the cost-of-living price index of the Council for Community and Economic Research (“C2ER”), used by the nonpartisan National Center for State Courts to compare judicial salaries across different jurisdictions.³⁵ The C2ER index examines average costs of goods and services for the latest four fiscal quarters in selected reporting jurisdictions across the nation. Based on the C2ER index, weighted for population density, New York judges rank 50th — dead last — in real salary among the 50 state judiciaries. New York

³² We recognize that chapter 567 does not expressly include retroactive relief within the scope of the Commission’s force-of-law salary adjustment. However, this cumulative loss of purchasing power through inflation constitutes the clearest measure of economic injury caused by the lack of timely past adjustments — injury suffered both by incumbent judges, and by those who have retired and will not benefit from prospective measures. If the Commission were to propose some means of providing retroactive relief for these losses, the Judiciary would strongly support such a proposal.

³³ In 1909, salaries of Supreme Court Justices in New York City were \$17,500, the equivalent of over \$400,000 today, and in 1936, in the middle of the Depression, they were \$25,000, the equivalent of about \$390,000 today — both almost three times current salaries. In 1926, a Judge of the New York Court of Appeals received a salary of \$22,000 (*see* L. 1926, ch. 94), the equivalent of over \$269,000 today; in 1952, that salary was \$32,500 (*see* L. 1952, ch. 88), over \$265,000 in today’s dollars; in 1975, a Judge of the Court of Appeals earned \$60,575 (*see* L. 1975, ch. 152), the equivalent of about \$244,000 today.

³⁴ *See* National Center for State Courts, “Survey of Judicial Salaries,” Vol. 34, No. 2.

³⁵ *See id.*, at 2. NCSC describes the C2ER index as “the most widely accepted U.S. source for cost-of-living indices.” *Id.*

judges effectively earn less than half of what their counterparts in Tennessee and Delaware earn, and barely half of what their judicial colleagues earn in Illinois and Virginia.³⁶

Our State's place in the national ranking of judicial compensation is not a trivial statistic of local pride. Such ranking speaks volumes about how our society values its Judiciary and, by implication, how it values the rule of law that the Judiciary protects. It gauges the strength of our commitment to attract the very best and brightest of legal minds into responsible roles of civic governance. It measures our understanding, relative to that of other states, that exceptional judges are not a luxury, but a necessity in a state of national and international prominence — whether to maintain the constitutional checks and balances of vibrant government, to assure continued commercial excellence, to preserve the civil rights of our citizens, or to bring about the swift and wise resolution of the myriad of private disputes that are the judiciary's primary task. That New York has fallen to last in the nation by this calculus is proof not only that our State has forgotten its judges — but that it has forgotten, in some measure, an essential component of its greatness.

The following table presents the ranking of New York State in terms of both nominal salary paid and salary purchasing power in light of regional cost of living and illustrates the true depth to which New York real judicial salaries have fallen.

³⁶ See *id.*

NATIONAL RANKING OF JUDICIAL SALARIES

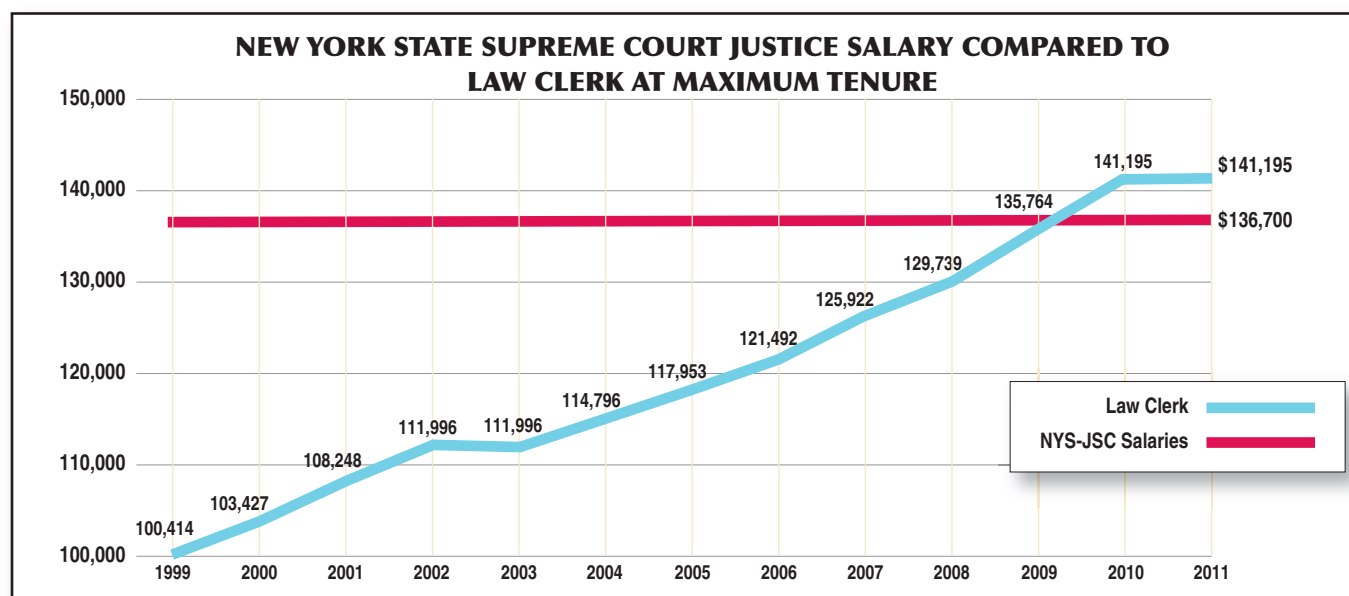
BASED ON ACTUAL SALARY			BASED ON ADJUSTED SALARY	
STATE	2010 ACTUAL SALARY	RANKING	STATE	2010 ADJUSTED SALARY
Illinois	\$178,835	1	Tennessee	\$173,004
California	\$178,789	2	Delaware	\$163,298
Alaska	\$174,396	3	Illinois	\$160,103
Delaware	\$168,850	4	Virginia	\$158,134
New Jersey	\$165,000	5	Nevada	\$157,480
Pennsylvania	\$164,602	6	Georgia	\$153,665
Nevada	\$160,000	7	Arkansas	\$147,624
Virginia	\$158,134	8	Iowa	\$147,430
Tennessee	\$154,320	9	Nebraska	\$147,216
Washington	\$148,831	10	Alabama	\$144,944
Connecticut	\$146,780	11	Florida	\$144,784
Arizona	\$145,000	12	Pennsylvania	\$144,514
Rhode Island	\$144,861	13	Arizona	\$144,135
Georgia	\$144,752	14	Michigan	\$143,654
Florida	\$142,178	15	Louisiana	\$141,495
Maryland	\$140,352	16	Kentucky	\$139,709
Michigan	\$139,919	17	Indiana	\$138,836
Iowa	\$137,700	18	Washington	\$137,552
New Hampshire	\$137,084	19	Oklahoma	\$136,824
NEW YORK	\$136,700	20	Utah	\$135,123
Louisiana	\$136,543	21	Texas	\$134,989
Arkansas	\$136,257	22	North Carolina	\$133,567
Hawaii	\$136,127	23	Alaska	\$133,025
Alabama	\$134,943	24	South Carolina	\$132,431
Utah	\$132,150	25	Colorado	\$131,625
Nebraska	\$132,053	26	Kansas	\$130,475
South Carolina	\$130,312	27	California	\$129,934
Massachusetts	\$129,624	28	Missouri	\$129,275
Minnesota	\$129,124	29	Ohio	\$128,006
Wisconsin	\$128,600	30	Wisconsin	\$126,950
Colorado	\$128,598	31	Wyoming	\$126,083
North Carolina	\$127,957	32	New Jersey	\$126,050
Indiana	\$125,647	33	North Dakota	\$125,743
Wyoming	\$125,200	34	West Virginia	\$125,405
Texas	\$125,000	35	Minnesota	\$120,339
Kentucky	\$124,620	36	Idaho	\$117,692
Oklahoma	\$124,373	37	Rhode Island	\$117,487
Vermont	\$122,867	38	New Hampshire	\$117,366
Ohio	\$121,350	39	Maryland	\$115,802
Missouri	\$120,484	40	South Dakota	\$115,336
Kansas	\$120,037	41	New Mexico	\$114,026
North Dakota	\$119,330	42	Connecticut	\$112,734
West Virginia	\$116,000	43	Mississippi	\$110,233
Oregon	\$114,468	44	Montana	\$106,763
Idaho	\$112,043	45	Oregon	\$103,497
Maine	\$111,969	46	Massachusetts	\$102,713
New Mexico	\$111,631	47	Vermont	\$101,964
South Dakota	\$110,377	48	Maine	\$96,111
Montana	\$106,870	49	Hawaii	\$82,153
Mississippi	\$104,170	50	NEW YORK	\$81,710

C. COMPENSATION OF NON-JUDICIAL PERSONNEL OF THE COURTS

A third objective criterion for sizing a proper judicial salary adjustment is derived by reference to pay increases provided to a typical non-judicial employees over the past 12½ years, pursuant to pay packages ratified by the Legislature and signed into law — packages based upon Judiciary collective bargaining agreements closely modeled upon agreements negotiated by the Executive Branch with its own employees.

These annual pay increases, which have averaged approximately 2.5% per year for most Executive and Judicial branch employees, and have raised the typical salary of non-judicial staff by more than 40%, operate as a cost-of-living adjustment to insulate their pay against the effects of inflation for nearly all New York State employees. However, the failure to provide similar cost-of-living adjustments to judges over the last 12½ years has upended long-standing salary distinctions based on the fundamental difference between judicial officers (who are constitutionally empowered to exercise judicial authority) and non-judicial personnel (who assist in the exercise of that authority in subordinate roles). For the first time in the history of the court system, hundreds of non-judicial staff now earn more than judges and justices in the Unified Court System whom they serve.

For example, at the time of the last judicial pay adjustment, judicial law clerks earned between \$70,435 and \$100,414 depending on experience and seniority. This range, ratified by the Legislature and consistent with percentage increases negotiated by the Executive branch for its employees, set law clerk salaries at between 51.5% and 73.5% of the salary of the Justice to whom they reported. This salary relationship appropriately balanced policy interests to promote staff-level professionalism and retention, while reflecting the judge's managerial authority over staff. With increases since 1999, those more senior law clerks today earn \$141,195 — 103.2% of their judges' salaries. Similarly disturbing salary compression and inversion trends exist between judges and other non-judicial staff. The following chart illustrates this trend for those senior law clerks.



Of course, the problems of salary compression and inversion are not unique to the Judiciary. They occur as well in some Executive branch agencies where commissioners' salaries, set by statute, may be exceeded by those of a handful of senior deputies. Yet nowhere else in State government are inversion and compression so widespread as in the Judiciary; nowhere is this problem worsening so rapidly; nowhere is it as consequential. In contrast to Executive agency heads, whose tenures are typically brief and at-will, judicial officers are elected or appointed for substantial terms (typically fourteen or ten years), designed to assure their indifference to outside influence. Judges alone are required to obtain a significant level of professional experience — education as attorneys and years of service — to qualify for the offices that they hold. Judges alone serve a branch of government that can neither vote for nor exercise veto over the budgets that determine their salaries. In sum, while salary compression and inversion is damaging in any organization or branch of government, its impact upon the Judiciary is uniquely pervasive and damaging.

D. THE STATE'S FISCAL CONDITION

No responsible analysis of the status of judicial pay in New York can be complete without a frank assessment of the State's fiscal condition. That condition is undeniably serious. As the Governor observed in his 2011 State of the State address³⁷ and on numerous occasions since, the State is facing a significant deficit and an urgent need to alter the manner and means by which government delivers services. As a result, over the last year, the court system has slashed expenditures, cut numerous programs, and substantially reduced its workforce. It remains firmly committed to partnership with the Executive and Legislative branches in addressing these serious fiscal issues.

Yet for three distinct reasons, the State's fiscal condition should not prevent this Commission from fulfilling its mandate to set forth an equitable adjustment of judicial salaries. Foremost is the principle of fundamental procedural fairness. As we have noted, by April 2012 the Judiciary will have waited more than 13 years without such an adjustment. Since the State last adjusted judicial salaries in 1999, the State budget has grown by 81% — from \$73.3 billion in fiscal 1999-2000 to \$132.5 billion in fiscal 2011-2012. During that period, including many years of relative plenty, the State repeatedly chose to defer the issue of judicial pay.³⁸ Had it instead acted in a timely manner, there now would be no need for either a large catch-up adjustment or a discussion of ability to pay. Having argued against and suffered through this inaction for years, judges should not be required to await better economic times for remedy of such unjust treatment.

Moreover, while any increase in state expenses is consequential, the proposed adjustments to judicial salaries will not threaten the State's fisc. Indeed, every \$10,000 statewide increase in judicial salaries constitutes an increase in the State budget of only nine one-thousandths of one percent. Even in these difficult fiscal times, resources do not pose an obstacle to reform of past practices.

³⁷ Cuomo, "New York at a Crossroads: A Transformation Plan for a New New York" (2011 State of the State), at 2-4.

³⁸ One result of the State's failure to adjust judicial salaries equitably over the last 12-1/2 years has been the saving of several hundreds of millions of dollars for other State purposes. In light of such savings through past delay, it defies all notions of fairness to claim that a current adjustment is too costly for the State to absorb.

Finally, as we noted earlier in this Submission, the establishment of this Commission marks the first opportunity to adjust judicial salaries in a transparent and non-political manner, on the basis of rational, objective, and predictable criteria — a manner in stark contrast to the gridlock and ad hoc convenience of past political practice. This mandate, we submit, epitomizes the standards of fair, open and rational governance that the Governor and others have recommended as essential to New York’s future. To decline to implement appropriate salary measures because they entail new costs would not only perpetuate and worsen the ill effects of past practice: it would shrink the Commission’s historic mission by half, permitting identification of a longstanding problem, but not its cure.

E. OTHER CONSIDERATIONS AND CRITERIA

1. Federal Judicial Salaries. An additional factor for consideration in appropriate adjustment of New York judicial salaries — though no longer the best comparative metric — is compensation paid to the federal bench. In 1998, when the Legislature last adjusted judicial salaries, it set the Supreme Court Justice salary at \$136,700, the salary then paid to U.S. District Court judges. Since that adjustment, U.S. District Court judges have received nine salary increases, most recently in 2009, and today earn \$174,000.00 annually.

Yet while parity with federal District Court judges may well have been appropriate in 1998, and has been proposed by the Judiciary in the past, it is appropriate no longer. For several years, federal court authorities have recognized the inadequacy of even these enhanced judicial salaries, and have repeatedly sought higher compensation.³⁹ Moreover, the real purchasing power of the federal District Court salary has trailed CPI-U inflation measures since 2006, and is now substantially less than it was in 1999. Finally, while restoration of equality with federal judicial salaries reestablishes a facial parity in compensation, it ignores a significant consequence of past differences: over the last 12 years, U.S. District Court judges have earned an accumulated total of approximately \$292,000 more than their State Supreme Court counterparts. Accordingly, federal judicial salaries provide an appropriate standard for New York judicial compensation only when adjusted for inflation according to the CPI-U since 2006 — the point at which federal salaries began to trail inflation. Such an adjustment would result in a Supreme Court Justice salary of \$193,813 in April 2012.⁴⁰

³⁹ See Roberts, C.J., “2008 Year-End Report on the Federal Judiciary,” at 7-8 (“I suspect many are tired of hearing it, and I know I am tired of saying it, but I must make this plea again — Congress must provide judicial compensation that keeps pace with inflation. Judges knew what the pay was when they answered the call of public service. But they did not know that Congress would steadily erode that pay in real terms by repeatedly failing over the years to provide even cost-of-living increases”); available at <http://www.supremecourt.gov/publicinfo/year-end/2008year-endreport.pdf> (accessed May 25, 2011); Rehnquist, C.J., “2006 Year-End Report on the Federal Judiciary,” at 1 (the “failure to raise judicial pay” for federal judges “has now reached the level of a constitutional crisis that threatens to undermine the strength and independence of the federal judiciary”), available at <http://www.supremecourt.gov/publicinfo/year-end/2006year-endreport.pdf> (accessed May 17, 2011).

⁴⁰ The salaries of New York judges have exceeded federal judicial salaries at various times throughout the State’s history — most recently between May 1985 and July 1987, and again between November 1987 and January 1990 (Supp. 57).

2. Other Statutory Factors. Chapter 567 directs the Commission to consider in the course of its work “the levels of compensation and non-salary benefits received by . . . executive branch officials and legislators of other states and of the federal government” and “the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise.”⁴¹ To facilitate this review, the Supplemental Appendix to this Submission lists the compensation of the executive and legislative branches of the federal government and sister state governments, as well as salaries for comparable professionals in the private, public, academic and nonprofit sectors (Supp. 100-117, 545-609). We believe that these factors and statistics fully support this Submission’s reasoning and recommendations.

3. Pay Parity Between Courts. In addition, another longstanding salary problem endured by New York judges is the many pay disparities within and between trial courts throughout the State.⁴² Past commissions and commentators have criticized these disparities as irrational and called for their elimination.⁴³ We agree.

⁴¹ L. 2010, c. 567, § 1(a).

⁴² The Judiciary Law details numerous such disparities, many of which lack clear justification. For example, judges of the Family and Surrogate’s Courts in Albany County earn \$119,800, while County Court judges earn a much higher \$131,400; in neighboring Schenectady County — with comparable living costs — judges of the County, Family and Surrogate’s Courts earn \$119,800; in Broome County, judges of the County and Surrogate’s Courts earn \$119,800, while Family Court judges earn \$125,600; in Dutchess County, judges of the County and Family Courts earn \$125,600, while the Surrogate earns \$135,800. *See also* (Supp. 52-55).

⁴³ *See, e.g.*, Report of the Jones Commission I (1987) (calling for pay parity among judges of the major trial courts); Report of the Jones Commission II (1992) (calling for further study and evaluation of the subject).

IV. THE COMMISSION SHOULD IMPLEMENT AN IMMEDIATE AND SUBSTANTIAL SALARY INCREASE

BASED ON THE FOREGOING FACTS, the Judiciary strongly recommends that the Commission implement an immediate salary increase to restore the purchasing power of judicial compensation to its level at the last adjustment in 1999. That adjustment, we submit, should be derived from the factors detailed above — inflation, judicial salaries in other States, non-judicial staff salaries, and federal district court judicial salaries (adjusted for inflation). Using the 1999 and current salary of a Justice of the Supreme Court (\$136,700) as a benchmark,⁴⁴ those factors establish the following values:

- An adjustment consistent with the CPI-U measure of inflation (41%) would require a Supreme Court salary of \$195,754 in April 2012, to restore the purchasing power of judicial pay to its 1999 level.⁴⁵
- An adjustment sufficient to lift New York from 50th to 25th in rank among the States on the C2ER cost-adjusted index would require a salary of \$220,836. An adjustment from 50th to 40th national rank would bring the Supreme Court justice salary to \$194,068 in April 2012. Even at 40th in rank, New York cost-adjusted judicial salaries would still be significantly lower than all large states to which New York typically compares for policy purposes (e.g. California, Florida, Illinois, Michigan, Pennsylvania).
- An adjustment sufficient to reestablish the 1999 ratio between senior law clerks and the Supreme Court justices they serve would require an adjustment of 40.6%, resulting in a salary of \$192,218 in April 2012.
- An adjustment sufficient to calibrate New York salaries to those of federal judges (with an adjustment for inflation since January 2006), would result in a Supreme Court salary of \$193,813.

This spectrum of values — \$192,000 to \$220,000 — constitutes the appropriate range for judicial salary adjustment in New York under the principles of fairness, objectivity, regularity and institutional integrity.

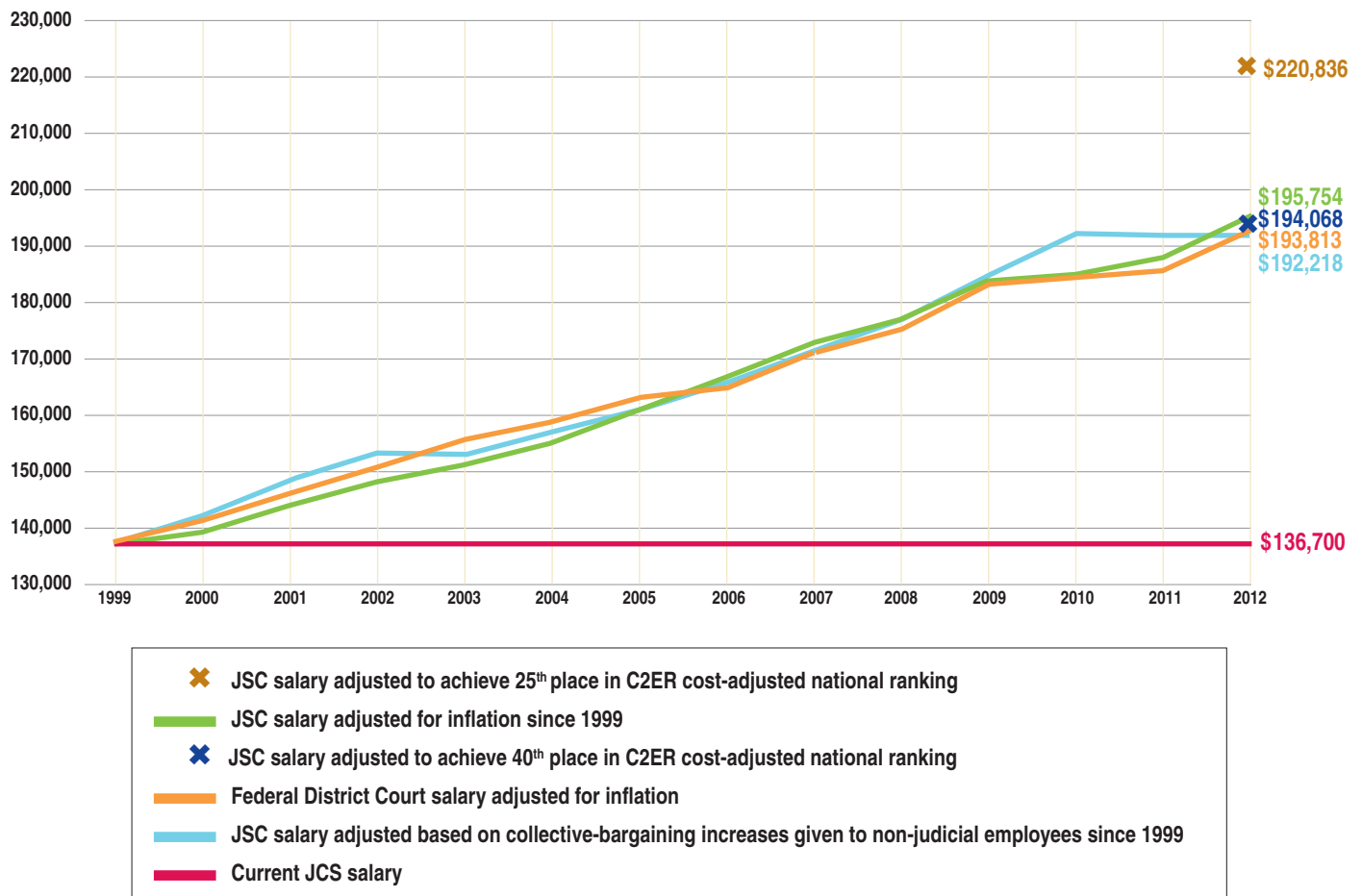
As we have described above (*infra*, pp. 18-19), the current fiscal climate presents no valid justification for continued underpayment of the Judiciary, or half-measures in implementation of the Commission's mandate. While such measures might present an appearance of austerity, in reality they would have a negligible impact, saving in their entirety eighteen one-thousandths of one per-

⁴⁴ As noted *supra*, the salary of a Justice of the Supreme Court has been employed as a benchmark throughout this Report. To the extent that judicial salaries of the judges or justices of appellate courts are greater than those of Supreme Court Justices, those marginal distinctions should be preserved proportionately. *See, e.g.* Judiciary Law §§ 221 (salary of Judges of the Court of Appeals), 221-a (salary of Justices of the Appellate Division of Supreme Court). To the extent they are lower, we commend the Commission's attention to section III(E)(3), *infra*.

⁴⁵ This figure assumes an ongoing inflation rate of 2.7%, the average annual rate since 1999.

cent of the State's budget over four years.⁴⁶ On the other hand, further postponement of immediate implementation of a fair salary would needlessly perpetuate past economic injury; compound such injury irreparably upon the significant number of judges who may be compelled by age or other circumstances to retire from the bench during the intervening period; and render the Commission's recommendations contingent upon political vagaries far in the future. After all that New York's judges have endured over the last 12½ years, further delay in remedy is neither necessary nor principled.

NEW YORK STATE SUPREME COURT JUSTICE (JSC) SALARY — RANGE OF PROPOSED ADJUSTMENTS



⁴⁶ An immediate salary increase to offset inflation since 1999, or to achieve 40th place in the C2ER cost-adjusted ranking, or to reestablish the 1999 ratio between senior law clerks and Supreme Court Justices would increase the State budget by less than 55 one-thousandths of one percent annually.

Finally, we urge the Commission to adopt cost-of-living adjustments to preserve judicial salaries against future erosion. For decades, judicial compensation in New York has followed a familiar cyclical pattern. After years of frozen pay, judges typically received a catch-up adjustment, restoring the value of salaries in part, but eschewing retroactive payment to compensate for the significant economic losses during the period of salary stagnation. Subject to the exigencies of politics, the adjusted salary thereafter would remain fixed for another lengthy period, without cost-of-living adjustment or other increase, until the cycle began anew.

This Commission has the power to break this pattern and establish a system in which judicial salaries, once set, are regularly adjusted to maintain their value. Implementation of an annual cost-of-living adjustment, to take effect in April 2013, April 2014 and April 2015 (based on the average CPI-U for the preceding two calendar years) would yield numerous benefits: it would eliminate the conundrum of major catch-up adjustments, give judges a long-absent measure of salary predictability, and permit rational budget planning by court administrators. While not a cure for past judicial salary inequities, we believe that provision of a cost-of-living adjustment is the simplest means of ensuring that those inequities do not reoccur.

V. CONCLUSION

AFTER SO MANY YEARS OF DECLINING REAL SALARIES for New York judges, we respectfully submit that this Commission should fulfill its mandate in the manner urged by virtually all observers across government, the bar, academia, the business and civic sectors, the government reform community and the press: New York judges must receive an immediate pay increase to restore the lost purchasing power of their salaries, with future cost-of-living adjustment so that these reforms do not lose ground to inflation. Fairness, rationality and the Judiciary's institutional integrity as an independent constitutional branch of government require nothing less.

SUBMISSION TO THE
2011 COMMISSION ON JUDICIAL COMPENSATION

APPENDIX A

Supporting Letter of A. W. (Pete) Smith
President, Smith Compensation Consulting, McLean, Virginia



813 Carrie Court | McLean, Virginia 21102
260-901-6887 | pete@smithcompensationconsulting.com

July 5, 2011

Mr. John McConnell
Counsel
NYS Office of Court Administration
25 Beaver Street (11th Floor)
New York, NY 10004

Dear Mr. McConnell:

This letter puts forth my independent opinion on the report that Chief Administrative Judge Ann Pfau is presenting to the New York Commission on Judicial Compensation.

As a professional with over forty years of compensation consulting experience, I have long been interested in problems of setting fair pay for government employees, including judges. Even recognizing that public service almost always involves some sacrifice and that employment in the private sector will almost always be more lucrative, the disparity between what federal and state judges have traditionally earned and the earnings of their private sector counterparts has seemed too large. The State of New York's failure to increase pay for its judges and justices since 1999 has severely exacerbated this problem, an issue that the Commission can now fix.

I have reviewed Judge Pfau's report in detail and agree fully with its recommendations. It is balanced; it gives full recognition to the difficult economic environment in which raising judicial salaries is being proposed; it documents clearly the economic losses New York judges have suffered and the inequities that have been created; and it provides solid proposals for correcting this problem going forward.

The report does not recommend specific salaries for the top level of justices or other judges. While this will appropriately be the decision of the Commission, my recommendation is that the Commission focus on the higher salary alternatives discussed in the report. The highest number mentioned in Ms. Pfau's report (a salary just over \$220,000 for New York Supreme Court Justices) would bring their salaries only to the midpoint of top justice compensation in the 50 states, on a cost-adjusted basis. Undoubtedly there will be some public criticism of such a large raise (roughly \$85,000 or 62% over the current level set in 1999), but *any* reasonable adjustment will seem large to some critics, and this is an opportunity to get it right.

Also left open in Ms. Pfau's report is the question of whether there should be some redress for the approximately \$330,000 the average New York judge has lost relative to the cost of living during the twelve-year salary freeze. It would not be unprecedented to provide some make-up compensation; other nonprofits have done so in the past, though not to my knowledge affecting such a large group. Further, I am not aware whether such payments would require special legislation. Nonetheless, I would recommend giving this serious consideration if New York judicial salaries are not brought to a fully competitive level.

Mr. John McConnell
July 5, 2011
Page 2

My final recommendation is that the Commission do everything that it can to support a process to ensure a regular periodic review of judicial compensation beyond 2014. It is vital to the state and the country that we have a strong judiciary system, and there is no reason to let New York judges' compensation continue to erode in the future.

For the benefit of the Commission, this opinion has been provided on a pro-bono basis; I have received no compensation in connection with this letter. Information on my background is attached.

Sincerely,

A handwritten signature in cursive script that reads "Pete Smith". The ink is dark and the signature is fluid.

Pete Smith
President



A. W. (Pete) Smith, Jr.

Pete Smith has significant governance experience in both the private and public sectors. Mr. Smith now divides his time between serving on corporate and non-profit boards and providing executive compensation consulting services to a broad range of clients, primarily in the non-profit sector.

Mr. Smith spent most of his career at Watson Wyatt Worldwide (now Towers Watson), from which he retired as Chairman & CEO in 1999. As President of Smith Compensation Consulting, his clients now include many of the nation's leading nonprofit institutions.

In his thirty year career with Watson Wyatt, Mr. Smith consulted in areas ranging from executive compensation and benefits design to global human resources strategy. His clients included major Fortune 100 corporations, start-ups, technology firms, multinationals, professional services firms, family held businesses, and nonprofits.

Mr. Smith joined Wyatt in Boston in 1968 as a compensation consultant. In 1972, he was named Executive Vice President of Cole Surveys, then the leading provider of financial institution compensation survey data. In 1985, he was appointed Managing Partner of Wyatt's San Francisco office. He was appointed to the Board of Directors in 1986, as Global Compensation Practice Director in 1987, and as Managing Partner of the Washington, D.C. office (the firm's largest) in 1992. In 1993, he was elected President & CEO. During his tenure, he engineered a major transformation of the firm, strengthening its focus, improving its financial results, and substantially extending its worldwide operations – including combining Wyatt with R. Watson & Sons to form Watson Wyatt Worldwide. The firm recently merged to form Towers Watson.

After retiring from Watson Wyatt, Mr. Smith served as CEO of the Private Sector Council, a non-partisan non-profit dedicated to improving the management of the federal government. At PSC, Mr. Smith advised government officials at the highest levels on a variety of management, governance, and financial issues. While at PSC, Mr. Smith also spent a month in Baghdad advising U.S. and Iraqi officials on the design of Iraqi civil service programs.

A graduate of Harvard and a certified member of the National Association of Corporate Directors, Mr. Smith currently serves on the Boards of Alliance Bernstein, Addx Corporation, Celerant Consulting Government Services, and the Community Foundation of the National Capital Area. He previously served on the Board of the Mid-Atlantic Permanente Medical Group. Active in civic affairs, he has chaired the Board of Directors of the Association of Management Consulting Firms and the National Rehabilitation Hospital, is past Vice Chair of the Nonprofit Roundtable of Greater Washington and the Washington Performing Arts Society, and served as a Trustee of American University. He also served on the Independent Review Committee evaluating governance problems at the Smithsonian Institution.

More information can be found at www.smithcompensationconsulting.com and at Mr. Smith's blog, [non-profit musings](#).

SUBMISSION TO THE
2011 COMMISSION ON JUDICIAL COMPENSATION

APPENDIX B

Supporting Letter of Professor Peter Bearman

*Cole Professor of the Social Sciences,
Columbia University, New York, New York*

Professor Bearman's curriculum vitae has been set forth in greater detail in the Supplemental Appendix (Supp. 610-624).

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

INSTITUTE FOR SOCIAL AND ECONOMIC RESEARCH AND POLICY

July 6, 2011

John W. McConnell
Counsel
Office of Court Administration
25 Beaver Street (11th Fl.)
New York, New York. 10004

Dear Mr. McConnell,

At your request, I have read the Submission to the 2011 Commission on Judicial Compensation by the Chief Administrative Judge of the Courts and offer the following comments for your consideration.

I preface these comments by noting that I am the Cole Professor of the Social Sciences at Columbia University where I direct the Institute for Social and Economic Policy. In addition I direct the Mellon Interdisciplinary Graduate Training program in social science and humanities, the Paul F. Lazarsfeld Center for the Social Sciences, and the Robert Wood Johnson Health and Society Scholars program. In these roles and through my academic work I have conducted extensive research on a variety of historical and contemporary problems. Most relevant for my comments in this context is my research in organizations and management and the sociology of identity. For the benefit of the Commission, this opinion has been provided on a pro-bono basis; I have received no compensation in connection with this letter. I have appended to this letter a copy of my Curriculum Vitae.

On pages 15-16 of the report it is observed that New York ranks last in State compensation for her judges when adjusted for the cost of living. We have long understood that such state rankings convey meaningful information about the priorities of the citizens and their representatives in the legislative and executive branches of the government. New Yorkers are proud that our state does not rank last in literacy and high school graduation (Mississippi holds this dubious distinction), last in per capita support for our great public libraries (North Dakota holds this distinction), infant mortality (Mississippi), Academic Research and Development (Nevada), proportion of the population with an advanced degree (Arkansas), and proportion of eligible voters who failed to vote in the 2008 elections (Hawaii). The commitment to health, education, development, and the electoral system are expressed by the relative positions of States with respect to these critical benchmarks. And this is also the case for commitment to critical institutions such as the judiciary.

There are three legitimate reasons for ranking last in compensation to the Judiciary. The first is that the activities of the judicial branch are the least complex, and least

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demanding of all State judiciaries. The second is that across all branches of government, the State ranks last in compensation, perhaps because governing is significantly less complex and difficult. The third is that compensation is tied directly to performance and the performance of the NY judiciary has evidenced significant decline over the past decade. None of these conditions hold. The NY State judiciary handles significantly more cases per capita than numerous court systems in the country. Rather than declining over the past decade, the work of the judiciary has intensified. New York is not ranked 50th with respect to support of the legislative and executive branches of state government. In fact, mean compensation for those in the legislative and executive branches of our government is above that of many states.

As Chief Administrative Judge Pfau's Submission makes clear, the position of the judiciary in New York is unique and disturbing. It is my opinion that it is also potentially threatening to the integrity of one of our central branches of government.

As the Submission makes clear, the situation we find ourselves in today is of recent origin. Thirteen years ago (in 1999) compensation for NY judges – across a variety of metrics, from comparison to Federal judges to comparison to judges in other States – was aligned. Within the judicial branch, judges earned more than their senior clerks. Today, many clerks earn more than the judges they work for, and on all reasonable metrics, NY State judges are compensated significantly less than their peers in other states or in the Federal Government. Today, depending on the specific comparison used, our judges earn from 22 to 52% less than their peers. This situation has arisen for a very simple reason. In the Federal system and across all other States, judges have received salary increases that at a minimum have been designed to keep up with inflation. In contrast, New York judges have not. Their compensation has been frozen at levels that were equitable in 1999. The compensation of their peers has changed to reflect increases in the cost of living. This has created an inequitable situation.

There are a number of separate issues that require redress. I consider each below.

First, as noted earlier, while one State does need to rank last in commitment to the judiciary, if that ranking does not arise from legitimate sources, it signifies to the public that we hold our judiciary to be of lesser value than the other branches of government. Such differential valuation threatens the integrity of our system of checks and balances.

Second, reduced compensation relative to peers threatens the functioning of an organization. In the short term, highly effective organizations are able to sustain commitment, identity and morale in the wake of such challenges. This is the case with the judicial system in New York today. There is little empirical indication that NY is losing judges to other occupations, that judges are returning poorer decisions, or that citizens with the appropriate qualifications are no longer seeking positions in the judiciary. However, uneven compensation systems create structural cleavages and fault-lines in organizations that are very difficult to observe, especially if those

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organizations are highly functioning and such cleavages may yield significant challenges in the future. By analogy, structural engineers are often unable to identify hidden fault-lines in critical structures (for example, the I-35W bridge across the Mississippi River bridge in Minneapolis that collapsed on August 1 2007, until such fault-lines express themselves in catastrophic failure. The absence of empirical indicators of stress provides no guarantee that latent stresses will not express themselves.

Third, issues of equity in comparison to peers are critically important when the resources at stake are distributed in an unfair manner. Here I distinguish between considerations of the equity with respect to the absolute amount of value (in this case, compensation) that is at stake, and considerations of equity with respect to the procedures by which these values are distributed. When those procedures are unfair, we violate one of our most important normative principles. As described in your report, the judges of NY have been subject to an unfair process for the past thirteen years. This process has resulted in inequities in absolute terms, but it is the process that is most challenging to the health of the judicial branch.

Redress thus requires the institutionalization of a fair process. Such a process is reflected in guarantees for cost-of-living increases once balance to the 1999 baseline (where equity was defined and thus established) is achieved.

No state would like to be thought of as the State that values its judges the least. It is sad that New York has allowed short-term exigencies to create a situation in which such an inference would be warranted. Likewise, every State has a constitutional obligation to secure the highest functioning of all three equal branches of government. Failure to secure the environment for such functioning risks unanticipated crisis and is contrary to the guidance that animated the design of our constitution. Finally, procedural justice in the distribution of resources to members of our society whose contributions are marked is an important foundation for beliefs in the fairness of systems. When such systems are subject to exogenous pressures arising from political winds, we risk creating enduring inequalities.



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Education

1982 – 1985 Ph.D. in Sociology, Harvard University
1980 – 1982 MA in Sociology, Harvard University
1974 – 1978 BA in Sociology, Magna Cum Laude, Brown University

Positions and Employment

1986 – 1991 Assistant Professor of Sociology, University of North Carolina, Chapel Hill
1991 – 1996 Associate Professor of Sociology, University of North Carolina, Chapel Hill
1996 – 1997 Professor of Sociology, University of North Carolina, Chapel Hill
2002 – 2003 Visiting Professor of Sociology, DISPOS, University of Genova
1998 – Director, Paul F. Lazarsfeld Center for the Social Sciences
1998 – 2008 Professor of Sociology, Columbia University
2007 – External faculty, Nuffield College, Oxford
2008 – Jonathan Cole Professor of the Social Sciences, Columbia University
2000 – 2008; 2011 – Director, Institute for Social and Economic Research and Policy, Columbia University

Books

1. Neckerman, Kathryn, Peter Bearman, and Lesley Wright (eds). *After Tobacco: Assessing the Impact of Tobacco Control Policy*. Columbia University Press. 2011: New York.
2. Hedstrom, Peter and Peter Bearman (eds). *Handbook of Analytical Sociology*. Oxford University Press. 2009: Oxford and New York.
3. Bearman, Peter. *Doormen*. University of Chicago Press. 2005: Chicago, Ill.
4. Bearman, Peter. *Relations into Rhetorics: Local Elite Social Structure in Norfolk, England: 1540-1640*. Rutgers University Press. American Sociological Association, Rose Monograph Series. New Brunswick NJ.

Selected Peer-reviewed Publications (in chronological order, selected from 69 publications)

1. Stovel, Katherine W, Michael Savage and Peter S. Bearman. "Ascription into Achievement: Models of Career Systems at Lloyds Bank, 1890-1970." *American Journal of Sociology*. 1996: 102:358-399.
2. Resnick, Michael D, Peter S. Bearman, and Robert Wm. Blum et al. "Protecting Adolescents from Harm: Findings from the National Longitudinal Study on Adolescent Health." *Journal of the American Medical Association*. 1997: 9: 10:832-84
3. Bearman, Peter. "Generalized Exchange." *American Journal of Sociology*. 1997: 102.5:1383-1415.
4. Kim, Hyojoung and Peter S. Bearman. "Who Counts in Collective Action? The Structure and Dynamics of Movement Participation." *American Sociological Review*. 1997: 62:70-93.
5. Bearman, Peter S. and Hannah Brückner. "Promising the Future: Virginity Pledges and the Transition to First Intercourse." *American Journal of Sociology*. 2001: 106: 4: 859-912.
6. Bearman, Peter S, and James Moody. "Suicide and Friendships among American Adolescents".

American Journal of Public Health. 2004: 94: 1: 89-96.

7. Bearman, Peter S, James Moody and Katherine Stovel. "Chains of Affection: The Structure of Adolescent Romantic and Sexual Networks". *American Journal of Sociology*. 2004: 110: 44-91
8. Brückner, Hannah and Peter S. Bearman. "After the Promise: The STD Consequences of Adolescent Virginity Pledges". *Journal of Adolescent Health*. 2005: 36: 271-278
9. Erickson, Emily and Peter S. Bearman. Emily Erickson and Peter Bearman. "Malfeasance and the Foundations for Global Trade: The Structure of English Trade in the East Indies, 1601-1833." *American Journal of Sociology* 2006: 112:195-230
10. Baldassarri, Delia and Peter S. Bearman. 'Dynamics of Political Polarization'. *American Sociological Review*. 2007: 72: 784-811.
11. King, Marissa and Peter Bearman. "Diagnostic Change and Increased Prevalence of Autism". *International Journal of Epidemiology*. 2009: 38: 5:1224-1234
12. King, Marissa, Diana Dakhallalah, Christine Fountain, and Peter Bearman. "Estimated Autism Risk and Older Reproductive Age". *American Journal of Public Health*. 2009: 99: 9: 1673-1679
13. Liu, Ka-Yuet, Marissa King and Peter S. Bearman. "Social Influence and the Autism Epidemic". *American Journal of Sociology*. 2010: 115: 5: 1387-1434
14. Liu, Ka-Yuet, Noam Zerubavel, and Peter S. Bearman. "Demographic Change and the Increasing Prevalence of Autism". *Demography*. 2010: 47: 2: 327-343.
15. Shwed, Uri and Peter S. Bearman. "The Temporal Structure of Scientific Consensus Formation". *American Sociological Review*. 2010: 75: 6: 817-840.
16. Cheslack-Postava, Keely; Ka-Yuet Liu, and Peter S. Bearman. "Closely Spaced Pregnancies are Associated with Increased Odds of Autism in Sibling Births". *Pediatrics*. 2011: 127: 2

Selected Ongoing Research Support

National Institute for Health Director's Pioneer Award

9/30/07-7/31/12

Social Determinants of the Autism Epidemic

This study seeks to identify the determinants of increased prevalence of autism. Peter Bearman serves as the Principal Investigator.

National Institute for Health

9/20/10-9/19/11

Patterns of Psychotropic Utilization in the United States, 2004-2008

This study investigates the dynamics of psychotropic drug use in the US. Peter Bearman serves as the Principal Investigator.

Robert Wood Johnson Foundation

9/1/02-8/31/11

Health and Societies Scholars Program

This is a training project to direct a post-doctoral training program in Population Health. Peter Bearman serves as the co-director of the program.

Mellon Foundation

1/1/07-6/30/13

Mellon Interdisciplinary Graduate Fellows Program

The graduate fellows program provides advanced doctoral students in the social sciences and related fields at Columbia with an intellectual and material environment for completing high-quality dissertations. Peter Bearman serves as the Principal Investigator.